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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARTIN T. GERBER and JOHN M. SWOYER

Appeal 2009-014625
Application 10/698,291
Technology Center 3700

Before JOHN C. KERINS, MICHAEL W. O'NEILL, and FRED A. SILVERBERG, *Administrative Patent Judges*.

O'NEILL, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Martin T. Gerber and John M. Swoyer (Appellants) appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1, 3, 8, 9, 11-15, 20-22, 24, 29, 32-36, 41, 42, 53, 55, 58-60, and 62 under 35 U.S.C. § 102(e) as anticipated by Falwell (US 7,255,695 B2, iss. Aug. 14, 2007) and claims 2, 4, 5, 7, 10, 23, 25, 26, 28, 30, 31, 43-47, 52, 54, 56, 57, 61, and 63 under

35 U.S.C. § 103(a) as unpatentable over Falwell. We have jurisdiction under 35 U.S.C. § 6(b). We REVERSE.

The Invention

The claims on appeal relate to a neurostimulation lead.

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

> 1. A neurostimulation lead comprising:
> a lead body having a proximal end and a distal end;
> a plurality of stimulation electrodes disposed adjacent the distal end of the lead body; and
> a fixation mechanism mounted to the lead body at a position between one of the electrodes and the proximal end of the lead body, the fixation mechanism including one or more wire-like elements that are expandable to fix the lead body at a tissue target site, wherein the position is axially displaced from the plurality of stimulation electrodes.

OPINION

We have carefully reviewed the Examiner's rejections in light of the Appellants' arguments and the Examiner's responses. As a result of this review, we determine Falwell fails to anticipate or render obvious the claimed subject matter. Our reasons follow.

The claimed subject matter on appeal calls for a fixation mechanism.

The Examiner finds that Falwell's element 28A, which is disclosed as a braided conductive member, as depicted in Figure 14, satisfies the claimed fixation mechanism. Ans. 3. In response to Appellants, the Examiner explains

> Falwell et al disclose a lead that includes both a plurality of stimulation electrodes and a fixation mechanism. Member 28A is not precluded from being a fixation member even if it is

> an electrode because it can be considered as not necessarily one of the plurality of electrodes.
>
> The conductive member 28A permits fixation of the catheter 10 at a tissue site. Falwell et al teach, "[a]lternatively, braided conductive member 28 can be 'preformed' to a close approximation of that anatomy, and be of sufficient strength (as by choice of materials, configuration, etc.) to force the tissue to conform to variations found in specific patients.' See col. 13, lines 57-61.

Ans. 4. Accordingly, to maintain the rejection, the Examiner relies on the embodiment shown in Figure 14 and the embodiment shown in Figure 15 of Falwell.

Contrary to the Examiner's interpretation of Falwell, we find both embodiments are silent as to the braided conductive member being a fixed mechanism. The embodiment in Figure 14 is disclosed as being designed to expand through a blood vessel. Col. 13, ll. 25-43. As Appellants have argued, if the Examiner is characterizing the conductive members 28B and 28C as stimulation electrodes, the conductive member 28A would also have to be reasonably considered a stimulation electrode. App. Br. 8. To support their position, the more reasonable understanding of Fallwell's disclosure; Appellants reference the depiction in Figure 22 which is illustrative of the application of Falwell. App. Br. 9. As contended by Appellants, Falwell discloses the catheter shaft is inserted into an ostium of a pulmonary vein and the conductive member 28 is expanded to its deployed position and subsequently advanced into the vein. Col. 19, ll. 3-10. Once in position, the ablation procedure commences to create the annular ring lesion. If the conductive member were fixed, then it is likely the lesion could be compromised, and potentially result in the formation of improper necrotic

tissue. *See* col. 2, ll. 33-37 (a purpose of the invention). The embodiment in Figure 15 is of an eccentric shape used either for ablation or mapping. We have discussed above the potential detriment for having the conductive member fixed during ablation. Mapping does not denote fixation. Instead, it infers motion or movement, both of which are antonyms for fixation.

CONCLUSION

For the reasons above, Appellants have shown reversible error in the Examiner's rejections.

DECISION

The Examiner's decision to reject claims 1, 3, 8, 9, 11-15, 20-22, 24, 29, 32-36, 41, 42, 53, 55, 58-60, and 62 under 35 U.S.C. § 102(e) as anticipated by Falwell and claims 2, 4, 5, 7, 10, 23, 25, 26, 28, 30, 31, 43-47, 52, 54, 56, 57, 61, and 63 under 35 U.S.C. § 103(a) as unpatentable over Falwell is reversed.

REVERSED

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